

REMARKS

This Amendment is made in response to the Final Office Action dated April 18, 2008. In the Office Action claims 1-32 were rejected under 35 USC §102. By this Amendment, claim 1 is amended and claims 13-23 are cancelled. Currently pending claims 1-13 are believed allowable, with claim 1 being an independent claim.

CLAIM REJECTIONS UNDER 35 USC §102

Claims 1-13 were rejected under 35 USC §102(b) as allegedly anticipated by U.S. Patent Document No. 2003/0005028 (Dritschler). Office Action, page 2.

It is well settled that the Examiner has the burden of making out a *prima facie* case of anticipation in the first instance by pointing out where each and every element of the claimed invention, arranged as required by the claim, is described identically in the reference, either expressly or under the principles of inherency. See generally, In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Claim 1

Claim 1 is amended to recite, in part, "executing application instances of the distributed application by application containers, each application container sharing state information about its application instance with other application containers." Support for this amendment can be found at least at page 9, lines 14-17, and page 15, lines 23-25 of the present application. Claim 1 is also amended to recite, in part, "calculating quality of service metrics for each application instance by the application containers." Support for this amendment can be found at least at page 9, lines 5-6 of the present application.

In the Final Office Action, the Examiner argues Dritschler teaches all the claim elements of claim 1, "where the containers are the server address spaces." FOA, pp. 2. The application containers recited in claim 1 are clearly distinguished from server address spaces. For example, the recited application containers share state information about its application instance with other application containers. In Dritschler, by contrast, "The result

of the resource consumption evaluation is indicated to a server instance optimizer component 143 which calculates the optimal number of server instances per server address space 143 and provides this result to the server manager 104 of the goal adjustment component 103. The result of this calculation is used by the server manager 104 as a basis for a determination of the total number of servers 134 and the number of server address spaces 133 required." Dritschler, par. 0030. It is therefore respectfully submitted that the application containers recited in claim 1 are not disclosed in Dritschler.

For at least these reasons, it is respectfully submitted that Dritschler fails to anticipate the limitations of claim 1. Thus, claim 1 is believed allowable and indication of such allowance is earnestly requested.

Claims 2-12

Claims 2-12 are dependent on and further limit claim 1. Since claim 1 is believed allowable, claims 2-12 are also believed allowable for at least the same reasons as claim 1.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is now in condition for allowance and such action is respectfully requested. If any points remain at issue that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should a fee be required please charge Deposit Account 50-0510. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

Respectfully submitted,

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